IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 401 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BALUBHAI NAVLABHAI GANVA
Versus
STATE OF GUJARAT

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Appearance :
MR PM DAVE for Applicant
MR AY KOGJE APP for Respondent

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

Date : 20/06/2006

ORAL JUDGMENT

1 Heard learned Advocate Mr. P.M. Dave for petitioner and learned APP Mr. A.Y. Kogje for respondent State. Both the learned counsels requested the Court to hear the matter finally and, therefore, the matter is taken up for final hearing and Rule is

waived by learned APP.

2 The present petitioner and other accused are facing trial for the offence punishable under Sections 365, 366, 376 and 114 of the Indian Penal Code. After the evidence of the prosecution witnesses was recorded including the evidence of the prosecutrix, an application at Exhibit-41 came to be filed by the accused in the said Sessions Case No. 93 of 2005, pending before the learned Second Fast Track Court at Dahod, under Section 311 of the Code of Criminal Procedure, to recall prosecutrix to confront him in cross-examination with a chit which he wrote to the present petitioner and sent through the son of the accused. What was stated in the said chit was likely throw light on the facts of the case and, therefore it was requested that the prosecutrix be recalled for cross-examination in respect of the said chit. After hearing both the sides, the learned Judge on 17th of April, 2006, rejected the said Application and, hence, this Revision Application.

3 As it appears from the order impugned that the learned Additional Sessions Judge dismissed the said application solely on two grounds. Firstly, the learned Additional Sessions Judge felt that the accused had deployed the tactic to delay the trial and secondly while prosecutrix was in witness box, the learned Advocate for the accused already asked the questions regarding the chit. There is no third reason assigned by the learned Additional Sessions Judge for

rejecting the said Application Exhibit-41.

4 Learned Advocate Mr. P.M. Dave for the applicant submitted that it was never their intention to delay the trial. It was submitted that this Court may stipulate the time limit in which the recall cross-examination be conducted by the accused. Secondly, it was submitted that the said reason of learned Sessions Judge appears to have been misunderstanding because not a single question has been asked to the prosecutrix in respect of chit which came in possession of the accused during trial. This observation is factually appears to be in correct.

5 Section 311 of the Code of Criminal Procedure first part empowers at any stage of an inquiry or trial to summon any person as a witness or recall, re-examine any person, already examined. This part of Section 311 rests on the discretion of the Court. The concerned court may or may not recall the witnesses for the reasons. Needless it is to say that, such discretion must be exercised judiciously and for the reasons.

6 So far as the present case is concerned, it cannot be presumed always that when accused files an application, it is for the delay of the trial. On the contrary, the issue is always required to be examined with a view to achieve the ends of justice. In the present case, it might have happened that the chit which is referred

by the accused might have come in possession of the accused only after the examination of the prosecutrix was over. However, it must be observed that the application filed by the accused is not so elaborate so far as this aspect is concerned.

7 Having regard to the above said factual situation, it would be in the interest of justice, to remand the issue to the Trial Court for proper adjudication within the scope of Section 311 of the Code of Criminal Procedure as practically no reasons are assigned for rejecting the application under Section 311 of the Cr.P.C. and application itself does not disclose elaborate grounds.

8 In the above view of matter, it is directed that within 10 days from today, the present applicant shall file proper elaborate fresh application under Section 311 of the Criminal Procedure Code with grounds and supported by the affidavit before the Trial Court. On preferring such application by the accused, the learned Trial Judge shall afford fresh opportunity to both the parties of being heard and shall decide such application according to law with reasons as expeditiously as possible.

9 In this view of matter, the order impugned in this Criminal Revision Application stands quashed and set aside. Rule made absolute to the above extent. DS permitted.

(J. R. VORA, J.)

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